Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No.811 of 2001
(Old No. 802/1988)

Bazpur Cooperative Sugar Factory Ltd.
Bazpur (Nainital) ……..Appellant/Opp. Party

Versus

1. Smt. Kamlesh Agarwal, W/o Late Shri S.K. Agarwal
2. Master Amit Agarwal, Minor, through his natural guardian and mother Smt. Kamlesh Agarwal

Both residents of B-133 Jwala Bhawan, Shastri Nagar, Meerut.

……..Respondents/Opp. Parties

3. National Insurance Company Ltd.
   10/27 Badripura Haldwani, District Nainital.
4. Bishan Singh, Driver, The Bazpur Cooperative Sugar Factory Ltd., Bazpur, District Nainital.

……Defendants/Respondents

Date: October 12, 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant against the judgment and award dated 31.05.1988 passed by Shri Veer Bhadra Singh, IIIrd Additional District Judge, Nainital/ Motor Accident Claims Tribunal ***(in short the Tribunal)*** in Motor Accident Claims Case No.1828 of 1985. The relief claimed by this appeal by the Appellant is to set aside the impugned judgment and award of the Court below mainly on the grounds that Appellant is not at all liable to pay any amount and the liability, if any, can only be fastened on the Insurance Company contesting with Respondent No.3 defendant. Secondly, the ill-fated vehicle was being driven by Shri Satyendra Kumar Agarwal himself and the driver Bishan Singh was not the

occupant of the driver seat but the learned Tribunal has taken a contrary view against the evidence on record. Thirdly, that the accident did not occur on account of the rash and negligent driving of the Jeep but the conclusion to the contrary arrived at by the learned Tribunal and wrongly fixed the liability on the Appellant and lastly that the compensation awarded by the Tribunal is highly excessive and in view of the grounds mentioned, the judgment and award of the Tribunal is liable to be set aside.

Brief facts giving rise to this appeal are that on 14.03.1985 at about 5:30 P.M., Jeep No. UTF-9863 was going to Jim Corbet Park, Dikala, which was being driven by the employee of respondent No.2 Bishan Singh rashly and negligently, when reached 3 K.Ms. inside Corbett Park of Ramnagar fell into Khudd and Shri Satyendra Kumar Agarwal died on the spot. The claimants Smt. Kamlesh Agarwal widow and Master Amit Agarwal minor son have filed the claim petition before the Motor Accident Claims Tribunal concerned U/s 110-A of the Motor Vehicle Act, 1939 for the compensation of Rs.12,00,000/-.

The age of the deceased Shri Satyendra Kumar Agarwal was –30- years at the time of accident and he was serving in Respondent No.1 factory on the post of Transport Officer and he was getting Rs.3,000/- per month as salary.

The Opposite Parties No.1 and 2 owner and driver have filed joint Written Statement Paper No.22-B and in their written statement, they said that the age of the deceased was –32-years. He was getting Rs.2,213 per month as salary after deducting the rent etc.

and the deceased was paying income tax himself and the vehicle was insured with the Opposite Party No.3, Insurance Company and the liability to pay the compensation of the Insurance Company is unlimited and have further stated that the vehicle was being driven by the deceased himself at the time of accident.

The O.P. No.3, Insurance Company has also filed his written statement Paper No.19-A and the Insurance Company has said in his written statement the deceased was not having a valid driving licence at the time of accident.

On the basis of the pleadings of the parties, the learned Tribunal has framed following issues: -

(1) Whether at the time of the accident in question, the offending vehicle, namely Jeep No. UTF-9863 was being driven by Opposite Party No.2 Shri Bishan Singh?

(2) Whether the accident in question occurred on account of rash and negligent driving of the aforesaid Jeep?

(3) Whether the Opposite Party No.3 is not liable in compensation on the grounds alleged in Para-18 of the written statement of the O.P. No.3?

(4) To what compensation, if any, are the claimants entitled and from whom?

The claimants have adduced their evidences oral as well as documentary. The award of the deceased Smt. Kamlesh Agarwal has been examined as P.W. 1. She also filed a copy of the notice-dated 05.09.1985 and on behalf of the Opposite Parties Shri Pan Singh and Bishan Singh and Suraj Prakash have also been

examined. They have also filed copy of the reply of the notice and Insurance Policy as documentary statement and proof of the date of birth and pay were also filed by list 41-C before the Tribunal. The learned Tribunal decided Issuer No.1 and 2 jointly. On the basis of evidence, the Tribunal came to the conclusion that the Jeep No. UTF-9863 was being driven rashly and negligently by its driver Shri Bishan Singh O.P. No.2 and not by the deceased Shri Satyendra Kumar Agarwal.

The learned Tribunal decided Issue No.1 and 2 against the Opposite Party. The Tribunal discussed the evidence in detail and recorded a categorical finding that the O.P. No.2 Bishan Singh is also a party in the present claim petition and he is an employee of Respondent No.1 in his subordination. The statement of Bishan Singh cannot be relied upon in this regard that the vehicle was driven by the deceased and the statement of Bishan Singh is also contradictory. Shri Bishan Singh has said in his cross-examination that from Dhangiri, there was a Kuchha Road and the deceased drives the Jeep from Dhangri onward but he has not stated the reason why he has handed over the Jeep to drive on Kuccha Road. The learned Tribunal rightly held that the O.P. No.2 Bishan Singh is an interested witness and statement of Bishan Singh cannot be relied upon on this fact.

We have heard Shri C.K. Sharma, learned counsel for the Appellant, Bazpur Cooperative Sugar Factory Ltd., Bazpur as well as Shri A.K. Mishra, learned counsel for Respondents and perused the entire material on record.

It has been argued that the vehicle was being driven by the deceased and not by the driver of the vehicle Bishan Singh. The statement of Bishan Singh cannot be relied upon in this regard that the vehicle was driven by the deceased. Shri Bishan Singh has said in his cross-examination that from Dhangiri, there was a Kuchha Road and the deceased drove the Jeep from Dhangiri onward but he has no stated the reason why he has handed over the Jeep to drive on Kuchha Road. He is employee of Appellant. The tribunal rightly held that Bishan Singh is an interested witness and statement of Bishan Singh cannot be relied upon. There is no sufficient explanation of the fact why he has handed over Jeep to deceased to drive on Kuchha Road. He has not stated whether he was not feeling well or was unable to drive the vehicle at the relevant time.

We have also perused the oral and the documentary evidence and the Tribunal has not committed any error in holding that the vehicle was being driven by the O.P. No.2 Bishan Singh rashly and negligently and not by the deceased.

The Tribunal on the basis of documentary evidence calculated the annual dependency Rs.14,100/- per annum after deducting half of the amount of self expenses of the deceased. Normally, 1/3rd of the personal expenses is being deducted. The Tribunal assumes that if the deceased would have worked till the age of –65- and the age of the deceased was –33- years, hence the life expectancy of the deceased could have been –32- years. As such, the Tribunal awarded the compensation for Rs.4,65,000/-. No dispute, the deceased was a salaried person and the Tribunal has rightly

calculated the amount of compensation on the basis of the salary received by him after deducting the expenses.

In view of the aforesaid discussions, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months.

(B.S. Verma, J.) (P.C. Verma, J.)

Rajeev Dang